

Citation: *R. v. Knaack*, 2018 YKTC 6

Date: 20180213
Docket: 17-00123
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Schneider

REGINA

v.

STEPHEN HANS KNAACK

Publication of information that could identify the complainant or a witness is prohibited pursuant to section 486.4 of the *Criminal Code*.

Appearances:
Benjamin Flight
Brendan M. Miller

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Mr. Knaack pleaded guilty to one count of sexual assault. The Crown has elected to prosecute by way of summary conviction procedure. He is before the Court to be sentenced. Considerable material has been filed by both parties. As well, a Victim Impact Statement (“VIS”) has been received.

The Facts

[2] The facts are agreed as between counsel and were provided in an ‘Agreed Statement of Facts’ which has been abbreviated somewhat below.

[3] Mr. Knaack is an officer with the Royal Canadian Mounted Police (“RCMP”) at Whitehorse, Yukon. On the morning of January 4, 2017, Mr. Knaack approached the victim, K.E., who is a public service employee of the RCMP, at her office. He was in uniform. Initially, there was some casual conversation between the two. Mr. Knaack was standing at the opposite side of K.E.’s desk¹. He reached down to give her a hug. K.E. said “...let me stand up so that I can give you a real hug.” As she was standing, Mr. Knaack said that she was standing up so that he could “grab her ass”. As Mr. Knaack hugged K.E. he squeezed her buttocks with his left hand. K.E. replied that there was “lots to grab”, to which Mr. Knaack replied “I like big women”. K.E. did not consent to Mr. Knaack touching her buttocks.

[4] On January 5, 2017, K.E. filed a complaint of harassment against Mr. Knaack.

[5] Subsequent to that event, on January 6, 2017, Mr. Knaack sent an unsolicited email to his superior officer regarding the event wherein he indicated that he and K.E. “...gave each other a hug, and I squeezed her buttocks with my left hand.” He further stated that “...it is disreputable conduct for a member and supervisor. There is no tolerance of this in the workplace. There is no excuse for a man to force himself on a woman.”

[6] On January 7, 2017, Mr. Knaack was suspended as a result of this incident.

[7] On May 25, 2017, Mr. Knaack was charged criminally. On that day the RCMP provided a media release about the incident. On June 14, 2017, Mr. Knaack made his

¹ It is indicated in the PSR (*not* in the Agreed Statement of Facts) that there were two other employees present in the room at the time.

first appearance in court. There has since been significant local coverage of the matter in the media in which Mr. Knaack's full name has been disclosed. On June 8, 2017, K.E. was interviewed by the Crown. She indicated that she has no fear that Mr. Knaack would harm her or her property.

[8] Mr. Knaack has been a member of the RCMP since February 28, 2000. He has been stationed in Whitehorse since 2010. He is 43 years old. He has no criminal record.

[9] On August 24, 2017, Mr. Knaack was the subject of an internal discipline decision wherein he was sanctioned as a result of this matter as follows:

- a) A written apology to K.E. was to be completed and placed on Mr. Knaack's conduct file;
- b) Forfeiture of 160 hours of pay (value \$8,023.08);
- c) Demotion to rank of Constable, effective August 24, 2017 (which results in an annual salary decrease of \$8,182.00);
- d) Ineligibility for promotion for a period of three years; and
- e) Immediate transfer to another location outside of the Yukon.

[10] The total financial loss to Mr. Knaack arising from the internal disciplinary action is not less than \$32,569.80.

Position of the Parties

[11] Mr. Flight, on behalf of the Crown, is advocating for a conviction in the form of a suspended sentence and a period of probation that would include the following terms as indicated in paragraph 13 of the Agreed Statement of Facts:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;
4. Report to a Probation Officer within two days and thereafter, when and in the manner directed by the Probation Officer;
5. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer.

[12] Mr. Miller, on behalf of Mr. Knaack, is advocating for a conditional discharge pursuant to the provisions of section 730 of the *Criminal Code*. He is agreeable to a probation order with the same terms.

Issue(s)

[13] With respect to the test to be met, there does not appear to be any dispute that a discharge would be in the best interests of Mr. Knaack and that the general considerations in that regard (eg. *R. v. Fallowfield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.)) are met. The debate is as to whether a discharge is ‘not contrary to the public interest’. I take this to include the prospect that the public’s confidence in the administration of justice would be compromised as a result of imposing a discharge in Mr. Knaack’s case.

[14] With respect to this so-called ‘second arm’ of the test, counsel have provided the Court with a significant volume of cases to consider. While helpful, there is considerable

variability in how other courts have dealt with this issue in respect of factual scenarios that are more and less similar to the matter currently before this Court. There are cases clearly supporting each party's position.

[15] It is agreed that, within the range of inappropriate behaviour referred to as 'sexual assault' and therefore captured by section 271 of the *Criminal Code*, the present facts are toward the less serious end of the spectrum. This is also reflected in the Crown's election.

[16] It is helpful to identify at the outset mitigating and aggravating factors that might militate toward one sentence rather than the other.

Aggravating Factors:

- 1) Mr. Knaack was employed as a senior RCMP officer which included work as a supervisor.
- 2) He has been employed by the RCMP for over 17 years.
- 3) The event took place at Mr. Knaack's workplace contrary to the *Canada Labour Code*, RSC 1985, c. L-2.

Mitigating Factors:

- 1) Mr. Knaack entered a plea of guilty at an early stage of the proceedings.
- 2) Mr. Knaack has expressed remorse consistently and unequivocally to the complainant and to his employer.
- 3) Mr. Knaack has insight with respect to the inappropriateness of his behaviour and the impact that it has had upon the complainant.
- 4) Mr. Knaack continues to be receptive to any treatment or counselling deemed appropriate.

- 5) Mr. Knaack has experienced a complexity of negative consequences resulting from this incident including demotion, loss of salary, damage to reputation, and embarrassment to friends and family.
- 6) Mr. Knaack is a mature first-time offender who is capable of reform.

[17] I am also mindful of the VIS wherein the complainant describes the impact this event has had upon her. As a result of this incident, K.E. has apparently been traumatized such that her relationships with co-workers, family, and friends have all been strained. She has had to take considerable time off work and has incurred the costs of counselling outside of what is covered by her personal benefits plan. She states that she will be forever impacted by this offence.

[18] The comprehensive Pre-Sentence Report (“PSR”) prepared by probation services was also considered by the Court. The PSR could be characterized as very positive. Mr. Knaack has had his share of domestic and work-related challenges. He was apparently forthright and appropriately responsive throughout the assessment. He had known the complainant for eight years and saw her as a good friend with whom he could exchange thoughts regarding personal struggles. At times they had consoled one another regarding personal situations. He indicated to the author of the PSR that he had had no previous physical or amorous relationship (or aspirations) with the complainant and did not intend to hurt her. He indicated that his actions were meant as a ‘joke’ and that he was trying to make her feel better. It is apparent that he was not expecting her negative response. Nevertheless, he does not contest the inappropriateness of what he has done and feels remorse for the anguish the event and the ordeal of the prosecution has caused her. He has expressed this to the complainant, his employer, and to the Court through his PSR.

[19] While in no way diminishing the apparent impact that Mr. Knaack's behaviour has had upon the complainant, a sentence must nevertheless be proportionate to the gravity of the offence and the degree of responsibility of the offender. Mr. Knaack is remorseful and takes full responsibility for any harm that he has caused the complainant; though he maintains that no harm was intended. He takes full responsibility.

[20] In this particular case it is common ground that, as a matter of law, a discharge is available for cases involving sexual assault and is therefore available to Mr. Knaack. It is also common ground amongst counsel, and the Court would agree, that within the range of behaviours leading to a charge of sexual assault, the matter that brings Mr. Knaack before the court is of the less serious sort. Risk assessment instruments place Mr. Knaack in the "low" priority category for supervision and intervention in comparison to other individuals charged with sexual assault. The author of the PSR concludes by saying "Mr. Knaack appears to understand the impact of his offending behaviour and acknowledges personal fault in the offence. Mr. Knaack is a suitable candidate for community supervision."

[21] I have also been provided with a number of 'letters of support' which confirm that the matter that brings Mr. Knaack before the court is atypical and out-of-character as his friends and colleagues know him. His supporters view the matter as not consistent with Mr. Knaack's history of good character and the esteem he appears to have enjoyed within the community. He does not have difficulties with drugs or alcohol. It has not been suggested that he has had difficulty complying with the terms of his judicial interim release order.

[22] The consequences resulting directly from this event have been profound. As indicated in the VIS, the complainant has been greatly affected. Mr. Knaack has suffered financially, professionally, interpersonally/socially, and emotionally. He and his family have been uprooted from their home in Whitehorse and moved to another jurisdiction.

Conclusion

[23] I am of the view that the Court must impose the sentence which is the least onerous and least restrictive and that will, at the same time, capture and adequately address all of the purposes of sentencing as set out in section 718 of the *Criminal Code*, which include denunciation, deterrence, and rehabilitation, while not undermining the public's confidence in the administration of justice. The Court must take into account the circumstances of the offence and of the particular offender. I accept as well the general proposition that police officers, in a position of public trust, may be held to a higher or more elevated standard of behaviour. Nevertheless, the same sentencing principles are applicable. And, as mentioned above, proportionality is the centrepiece of a fit sentence. Proportionality is something that cannot be assessed in a vacuum or in the abstract. Proportionality must be assessed in a contextualized manner particular to the specific accused and his circumstances. In measuring proportionality the Court must be mindful of the consequences that have resulted from Mr. Knaack's behaviour in a fulsome manner. It is not just consequences that might flow directly from the Court's specific order that must be considered but consequences arising in all domains. Those consequences have been reviewed above. They have been profound. Within the Knaack family there has been collateral damage.

[24] The fine, but not insubstantial, point of departure as between the Crown and Mr. Knaack is as to whether it is necessary in all of the present circumstances to enter a conviction. In considering all of the materials filed and the submissions of counsel, I am of the view that members of the public, properly informed, would not find that the imposition of a discharge would, in these circumstances, be contrary to the to the public's interest. All of the sentencing objectives as set out in section 718 of the *Code* can adequately be addressed within the ambit of a discharge subject to conditions.

[25] Therefore, for all of the reasons noted, I would discharge Mr. Knaack subject to the conditions jointly agreed upon by counsel (above) pursuant to a probation order for a duration of one year.

[26] With respect to the ancillary orders sought I am of the view that in all of the present circumstances those should not be imposed.

[27] There is a victim surcharge of \$100.00 payable forthwith.

SCHNEIDER T.C.J.